

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2005-050243

03/21/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

BILL STAPLES, et al.

TERRI A ROBERTS

v.

TORTOLITA GOLF CLUB LLC, et al.

GARY W HEIMBACH

**UNDER ADVISEMENT RULING**

(Plaintiffs' Motion For Summary Judgment and Defendants' Cross-Motion For Summary Judgment)

Defendants are golf courses in the Tucson area. Five of the six courses are owned by for-profit entities; the owner of the sixth course is organized as a non-profit organization, but lacks a 501(c)(3) letter from the IRS. All six courses are used in some combination by members (and their guests) and the general public. Plaintiff taxed Defendants as exclusively class one from tax year 2006 forward. The legal issue presented is whether to place the golf course property in class 1 or class 2.

The statutes governing the valuation of golf courses are not a model of clarity. A.R.S. § 42-12001 states, "For purposes of taxation, class one is established consisting of the following subclasses: ... (9) Real and personal property of golf courses that are valued at full cash value or pursuant to chapter 13, article 4 of this title." A.R.S. § 42-12002 states, "For purposes of taxation, class two is established consisting of two subclasses: 1. Class two (R) consists of: ... (d) Real property of golf courses that is valued at full cash value or pursuant to chapter 13, article 4 of this title. ... [and] 2. Class two (P) consists of: ... (d) Personal property of golf courses that is valued at full cash value or pursuant to chapter 13, article 4 of this title." The two statutes are the same. Chapter 13, article 4, A.R.S. § 42-13151 *et seq.*, gives no clear guidance as to which golf courses belong in class one and which in class two. A.R.S. § 42-13151 defines golf course as "substantially undeveloped land, including amenities such as landscaping, irrigation systems,

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paths and golf greens and tees, that may be used for golfing or golfing practice by the public or by members and guests of a private club;” but it excludes separate driving ranges and buildings such as clubhouses and pro shops. A.R.S. § 42-13152, specifies the method of appraisal, but it makes no distinction between class one and class two courses. A.R.S. § 42-13154 requires a deed restriction limiting the use of the property to a golf course for at least ten years. It too makes no distinction between class one and class two courses.

Likewise, the 1989 Op.Ariz.Atty.Gen. I-89-073 gives no clear guidance as to which golf courses belong in class one and which in class two as it appears to be based, either directly or indirectly, upon DOR interpretations and statutes superseded years ago. The present statutes relating to the treatment of golf course property had not yet been enacted. The Department of Revenue’s Assessment Procedures Manual focuses on the nature of use to classify courses: public use in what is now class one and use by members in what is now class two. It observes that some courses are expected to earn revenue and others not; but it also indicates that the assessed value of the course is normally not affected by the cash flow it generates. The 1999 ADOR Guideline departs from the Manual: it is the for-profit or non-profit use of the course that determines classification. Qualification for non-profit status pursuant to the Guideline requires both actual non-profit use and a 501(c)(3) letter from the IRS. In this case, the Board of Equalization followed the Manual. However, neither the Manual nor the Guideline sets forth any statutory support for their respective interpretations.

The definitional Section 13151, offers some legislative guidance. It recognizes a distinction between “the public” and “members and guests of a private club” who use the land for golfing or golfing practice. While this distinction is immaterial to the definition of a golf course as the game of golf and the layout it is played on are the same regardless of whether the players are “the public” or “members and guests of a private club,” if it reflects the legislature’s determination that golf courses differ in a legally significant way based on whether their clientele is public or private, then the only difference created by the statutes to which that could be germane is whether the courses would be taxed as class one or class two. Under this interpretation, Defendants are correct that it is the users, the public on the one hand, members and their guests on the other, rather than the owner of the course that determine its classification. Consequently, whether the owner possesses a 501(c)(3) letter is irrelevant. However, this fails to completely resolve the issue, as it does not resolve which courses fall into which class. While the Department of Revenue Assessment Procedures Manual, which was followed by the State Board of Equalization, predated the golf course statutes, its determination that public courses belong to class one and private courses to class two is reasonable. As discussed previously, this interpretation is not based on the current statutes, the presumption in favor of its correctness therefore is attenuated. Yet the Department of Revenue’s Manual and the Board of Equalization’s decision are broadly consistent with the statutory dichotomy.

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The Court finds Plaintiffs' alternative interpretation of legislative intent to be less persuasive. Plaintiffs argue that the common element of class one properties (section 12001) is their industrial or commercial use, while the common element of class two properties (section 12002) is their agricultural use or ownership by nonprofit organizations. Golf courses are not agricultural properties, thus they can qualify for class two rather than class one only by being owned by nonprofit organizations. The Court finds this dichotomy to be implausible. What commonality, apart from their inclusion in class two, do agriculture and nonprofit organizations share? A.R.S. § 42-12002 is a catchall that includes, in addition to agricultural property, property of Section 501(c) nonprofit organizations, and the undefined subclass of golf courses, all other real property and fixtures not included in any of the other classifications but valued at full cash value. The Court does not interpret this latter category to be limited to agricultural or nonprofit organizations' property, otherwise there might be properties excluded from any other classification but not qualifying for class two either. This latter category can only be reasonably interpreted to include all property, irrespective of ownership or use that would otherwise not fall through the cracks. Such an indeterminate category can be included in class two without confounding the legislative scheme and so too can golf courses. "The best and most reliable indicator of the framers' intent is the language of the statute itself." *Vega v. Sullivan*, 199 Ariz. 504, 507, 19 P.3d 645, 648 (App. 2001). "It is a basic principle of statutory construction that tax statutes relating to the same subject should be read together and construed as a whole." *Arizona Department of Revenue v. Maricopa County*, 120 Ariz. 533, 535, 587 P. 2d 252, 254 (1978). Statutory provisions must be considered in the context of the entire statute and consideration must be given to all of the statute's provisions as to derive the legislative intent manifested by the entire statutory scheme. *One Hundred Eighteen Members Of Blue Sky Mobile Home Owners Association v. Murdock*, 140 Ariz. 417, 419, 682 P.2d 422, 424 (App. 1984). In the Court's opinion, this interpretation gives effect to each provision.

There is no statutory support for using ownership by a for-profit or nonprofit organization as the basis for assigning class one or class two status. There is admittedly sparse guidance the legislature has given, however, that sparse guidance requires that the assignment be based on whether a course is used by the public or by members and guests of a private club.

Therefore, IT IS ORDERED:

1. Plaintiffs' Motion for Summary Judgment is denied.
2. Defendants' Cross-Motion for Summary Judgment is granted.